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Letter dated 21 June 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Colombia submitted pursuant to paragraph 6 of resolution 1373 (2001), as well as Colombia's response to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 16 June 2006 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Colombia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and is pleased to forward the fifth report from the Government of Colombia on the implementation of resolutions 1373 (2001) and 1624 (2005) (see enclosure).

Appendix

[Original: Spanish]

Report of Colombia to the Counter-Terrorism Committee on the implementation of resolutions 1371 (2001) and 1624 (2005)

June 2006

1. Implementation measures

Effectiveness in protection of the financial system

1.1 The Committee considers criminalization of the financing of terrorism to be a priority in the implementation of paragraph 1 (b) of resolution 1373 (2001). In its fourth report, Colombia indicates that it is including the financing of terrorism as a new category in the draft penal code that will be submitted to Congress. The Committee would be grateful to receive:

- **An update on progress towards the adoption of provisions on the financing of terrorism;**
- **Clarification of whether these provisions will criminalize the direct or indirect supply or collection of funds by Colombian nationals or in its territory by any person with the intention or in the knowledge that they will be used in the commission of terrorist acts, whether or not the funds be actually used to carry out terrorist acts, without the need for the funds to be transferred from one country to another and even if the funds are legal in origin.**

The Inter-agency Coordination Commission for the Control of Money-Laundering (CCICLA) has considered and elaborated a new legislative initiative to incorporate the provisions of the International Convention for the Suppression of the Financing of Terrorism, and of Security Council resolutions, particularly resolution 1373 (2001), into the Colombian legal order.

On 19 December 2005, the National Government, through the Ministry of the Interior and Justice, submitted to the Senate of the Republic "draft Act No. 208 of 2005 setting out norms for the prevention, detection, investigation and punishment of the financing of terrorism and other provisions".

The initiative would criminalize the financing of terrorism, as it is defined in Security Council resolutions. The financing of terrorism is characterized as follows:

> "*Any person who supplies, collects, delivers, receives, manages, holds for safekeeping or guards assets or resources, directly or indirectly, or carries out any other act that promotes, organizes, supports, maintains, finances or economically sustains illegal armed terrorists or their members, or national or foreign terrorist groups, or national or foreign terrorists, or terrorist activities, shall be liable to a term of imprisonment of between 13 and 22 years and a fine of between 1,300 to 15,000 times the current minimum statutory monthly wage.*"

Thus, the purpose of the draft Act is to punish the financing of illegal armed groups or their members or terrorist groups operating either in Colombian territory

or abroad. This means that, under the draft Act, proof of financing of a person or group regarded as terrorist is sufficient to constitute a crime, even if no act of terrorism is actually committed, without the need for the funds to be transferred from one country to another.

Additionally, the draft Act proposes, inter alia, the following legislative reforms:

In the area of prevention, reporting and detection of transactions, the Intelligence and Financial Analysis Unit (UIAF) established by Act No. 526 of 1999 will have expanded authority to receive suspicious transaction reports related to the financing of terrorism.[1] UIAF also has the authority to sign cooperation agreements with counterpart entities in other countries.

With regard to penalties, the financing of terrorism, in addition to being criminalized in accordance with multilateral instruments, will be included as a predicate offence of money-laundering[2] and constitute a legal basis for charging an individual with failure to report and conspiracy to commit a crime.

The draft Act also sets out the procedure for publishing and ensuring compliance with Colombia's obligations, with regard to binding international lists in accordance with international law and pursuant to the measures outlined in Security Council resolutions, in particular, resolution 1371 (2001).

Under the procedure proposed in the draft Act, the Ministry of Foreign Affairs would publish the international lists on terrorism or the financing of terrorism, by which Colombia is bound under international law, request the authorities to manage information on immigration flows, financial transactions and registry of any type of asset, and check relevant databases to determine the possible presence or transit of persons included in the lists, and of the assets or funds related to such persons.

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[1] Article 3. Functions of the Unit. The Unit shall prevent and detect transactions that may be utilized to conceal, manage, invest or use money or other assets derived from criminal activities and intended to finance terrorism, or to give the appearance of legality to criminal activities or transactions and funds related to such activities, in particular, money-laundering and the financing of terrorism. To that end, the information gathered shall be centralized, systematized and analysed through financial intelligence activities, pursuant to the provisions of articles 102 to 107 of the Organic Statute of the Financial System and its regulations and supplementary regulations concerning remand, tax and customs regulations and other information known to the State or private entities that could be relevant to the exercise of its functions. Such entities shall automatically, or at the request of the Unit, provide the information referred to in this article. The Unit may also receive information from individuals.

[2] Article 17. The first paragraph of article 323 of Act No. 599 of 2000, as amended by article 8 of Act No. 747 of 2002, shall be further amended as follows:

"**Article 323. Money-laundering.** Any person who acquires, protects, invests, transports, converts, holds for safekeeping or manages assets originating, directly or indirectly, from the activities of trafficking in migrants, trafficking in persons, extortion, illicit enrichment, extortive kidnapping, rebellion, arms trafficking, the financing of terrorism or management of resources related to terrorist activity, trafficking in toxic or narcotic drugs or psychotropic substances, crimes against the financial system or public administration, or linked to proceeds of crime that are the object of a conspiracy to commit an offence, or gives assets derived from such activities the appearance of legality or legalizes them, conceals or disguises the true nature, origin, location, destination, movement or rights to such assets, or commits any other act for the purpose of concealing or disguising their illicit origin shall, by that act alone, be liable to a term of imprisonment of between 8 and 22 years and a fine of between 650 and 50,000 times the minimum statutory monthly wage."

The authorities must report their findings to the Office of the Attorney-General of the Republic, which shall assess their relevance and make them available to the State that requested their inclusion in the list. The requesting State may then seek such cooperation from Colombia as it deems necessary under the provisions of the Code of Criminal Procedure on international cooperation.

Persons (both individuals and legal entities) with knowledge of the presence or transit of a person included in one of the above-mentioned lists, or of assets or funds related to such persons, must provide information to the Administrative Department of Security (DAS) and the Intelligence and Financial Analysis Unit (UIAF), without delay, on all matters within their competence.

Lastly, this legislative initiative contains norms on criminal jurisdiction and trial proceedings, which, inter alia, prohibit the application of the principle of prescription to matters that could be related to the crime of the financing of terrorism.

1.2 With respect to laws and regulations pertaining to the freezing of funds, the Committee understands that Colombia has two avenues that can be followed to secure (freeze) funds and other assets suspected of being linked to terrorist acts: the criminal confiscation procedure established in article 67 of the Penal Code and the termination of ownership rights under Act No. 793 (2002). The Committee would be grateful to have clarification of the process for securing (freezing) accounts and other assets on the basis of suspicious transaction reports from authorities such as the Intelligence and Financial Analysis Unit (UIAF).

In keeping with its functions and in accordance with Act No. 526 of 1999, the Intelligence and Financial Analysis Unit submits its financial intelligence reports to the Attorney-General and to the judicial police authorities who, upon examination and analysis of the information, decide whether to initiate the process of freezing, confiscation of assets or termination of ownership rights, as the case may be. UIAF does not participate in this process. In this connection, the process of freezing accounts and assets is initiated not on the basis of the suspicious transaction reports provided by the Intelligence and Financial Analysis Unit (UIAF) but rather on the basis of the examination and analysis which are the specific task of the prosecutors, who take judicial decisions in the final phase of their investigations. In certain instances, the banks may freeze assets on their own initiative.

In accordance with article 82 of Act No. 906 of 2004, the Code of Criminal Procedure, "*assets and resources of a criminally liable person deriving from the direct or indirect proceeds of the crime or those used or intended for use as a means or instrument for the commission of fraud shall be confiscated, without prejudice to any right thereto that the victim of the crime or third parties may have in good faith. Should the assets or resources arising directly or indirectly from the crime be commingled with or concealed by legally obtained assets, the estimated amount of the illegal proceeds shall be confiscated, unless such a procedure would constitute another crime, given that, in this case, the totality of the assets would be confiscated*".

As for the imposition of precautionary measures on assets that may be subject to confiscation, article 83 of that Act provides that "seizure and possession of assets shall constitute material measures for guaranteeing confiscation, and the suspension of the power to dispose of such assets shall constitute a legal measure to that end.

These measures shall be put into effect when there are reasonable grounds to infer that the assets or resources are the direct or indirect proceeds of fraud, that their value is equivalent to such proceeds, that they have been used or are intended for use as a means or instrument of fraud, or that they are the material object of such a crime, unless the assets are to be returned to the direct or indirect victim(s) of the crime or to third parties".

In accordance with the provisions of the Act,[3] the judge ensuring the legality of the trial proceedings and the rights and guarantees of the accused may, in the hearing in which charges are formulated or subsequently, at the request of the prosecutor or the direct victims, order the necessary precautionary measures to be imposed on assets in order to protect the right to compensation for crime-related damages. In this connection, it should be stressed that article 94 of the Code of Criminal Procedure establishes the principle of proportionality, in other words, that "precautionary measures cannot be applied to assets of the indicted or accused person if they appear to be disproportionate to the seriousness of the damages and the probable sentence in respect of claims for full reparation or assessment of damages", while article 95 calls for the immediate imposition of precautionary measures as soon as the order is given.

1.3 The Committee notes that there are legal provisions, resolutions and circulars which set out specific guidelines for suspicious transaction reports (STRs) by the financial and other sectors. The Committee would welcome details on the regulations for reporting by the legal and accounting sectors and on the way in which Colombia monitors the application of regulations in these two sectors.

As of this date, the law does not require legal and accounting professionals to report suspicious transactions. Nonetheless, the Colombian penal code, in its article 441, criminalizes failure to report, as follows:

> "Anyone with knowledge of the commission of the crimes of genocide, forced displacement, torture, enforced disappearance, homicide, extortive kidnapping or extortion, drug trafficking, trafficking in toxic or narcotic drugs or psychotropic substances, illicit enrichment, fronting, money-laundering, any violation of the rights of persons and assets protected by international humanitarian law or pimping when the victim is under 12 years of age, and fails, without just cause, to contact the authorities immediately shall be liable to a term of imprisonment of between two and five years.
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> *The above-described sentence for failure to report shall be increased by half for public servants.*"

Moreover, Act No. 526 of 1999 establishing the Intelligence and Financial Analysis Unit (UIAF) requires that government or private entities provide information to the Unit automatically or at its request, and authorizes it to receive information from individuals.[4]

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[3] Article 92.

[4] Article 3. Functions of the Unit. The purpose of the Unit shall be to prevent, detect and, in general, combat money-laundering in all financial activities, to which end the information gathered shall be centralized, systematized and analysed, pursuant to the provisions of articles 102 to 107 of the Organic Statutes of the Financial System and its regulations and

It should be borne in mind, however, that article 74 of the Political Constitution of Colombia expressly states that "professional confidentiality is inviolable".

The Constitutional Court has repeatedly stated in its rulings that "in accordance with the inviolability which the Charter attributes to professional confidentiality, a professional has no choice in the matter of whether to disclose or not disclose confidential information. He is obligated to respect its secrecy."[5] The Court notes, however, that "in extreme situations in which disclosure of confidential information would probably prevent the commission of a serious crime, the violation of the professional obligation would probably be regarded as justified".

Within this constitutional and legal framework, however, Columbia is contemplating mechanisms that would also require designated non-financial professions and activities to report suspicious transactions, in compliance with the specialized international recommendations in this area, in particular, those of the Financial Action Task Force (FATF), without exceeding the Political Charter and jurisprudence.

For example, the Central Board of Accountants, an administrative unit under the Ministry of Education, is the Disciplinary Tribunal and oversight body of the public accounting profession in Colombia.

Under the provisions of article 20 of Act No. 43 of 1990, the Central Board of Accountants shall:

- Ensure inspection and oversight, in order to guarantee that public accounting is exercised only by duly registered public accountants, that those who exercise the profession of public accounting do so in accordance with the legal norms, and that violators are punished under the law;
- Register public accountants and suspend or cancel registration, as appropriate;
- Issue the public accountant professional identity card and ensure compliance with the regulations governing it, as well as the necessary certification within the sphere of its institutional competence;
- Report to the competent authorities regarding anyone who identifies himself and signs as a public accountant without being registered as such;
- Ensure compliance with professional ethics standards;
- Establish sectional boards and delegate essential functions to them in order to facilitate the proper provision of services.

Within the actual context of these functions, the Central Board of Accountants is responsible, in particular, for highlighting the importance of public trust and thereby build the confidence of users of professional public accounting services; to that end, it investigates conduct that appears to violate the ethical order and imposes such disciplinary measures as may be appropriate.

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supplementary regulations concerning remittances, tax and customs regulations and other information known to the State or private entities that may be linked to money-laundering operations. Such entities shall automatically, or at the request of the Unit, provide the information referred to in this article. The Unit may also receive information from individuals.

[5] Ruling C-411 of 1993.

1.4 The Committee takes note of the work of the UIAF as described in the fourth report and would welcome additional information on the action taken by the competent authorities in response to the intelligence reports submitted by this unit on the basis of the STRs received.

UIAF financial intelligence reports produced on the basis of suspicious transaction reports submitted by the reporting sectors are received by the National Unit for the Termination of Ownership Rights and Control of Money-laundering of the Office of the Attorney-General and form the basis for opening a preliminary investigation. They are then transmitted to the Judicial Police Unit, which continues to verify the information. The necessary evidence is gathered and analysed and a report is prepared for submission to the public prosecutor assigned to the case, who determines whether there are grounds for opening formal investigations.

Working together with the Office of the Attorney-General and the judicial police authorities, UIAF has been able to identify persons on the basis of the intelligence reports submitted to it, and, following the necessary verifications, the judicial police authorities have initiated judicial and operational processes to capture persons and seize assets. UIAF also receives feedback and specific requests from the Office of the Attorney-General or the judicial police authorities and continues to analyse relevant facts during the investigations of those bodies in order to enhance their effectiveness.

1.5 The Committee understands from the reports that the Superintendence of Banks (SB) performs the function of investigating and enforcing the prohibition on the operation of informal banks or remittance operations. What administrative mechanisms are employed to detect and prevent unauthorized or unsupervised entities from operating and from transferring funds or assets abroad?

In accordance with the regulations in effect, any entity authorized to conduct such activities should obtain prior authorization from the Superintendence of Finance[6] and remain subject to its control, inspection and oversight. In the event that the Superintendence of Finance receives information on a natural or legal person who may be conducting unauthorized operations or activities outside the institutions under supervision, an inspection visit is carried out to verify the facts. If it is confirmed that the subject in question is acting without due authorization, the relevant mechanisms are applied immediately.

The administrative mechanisms used to prevent unregistered or unsupervised entities from conducting such operations are contained in article 108 of the Organic Statute of the Financial System.[7] The aforementioned norm authorizes the

[6] By Decree No. 4327 of 25 November 2005 the Superintendence of Banks of Colombia was merged with the Superintendence of Stocks to create the Superintendence of Finance of Colombia for the purpose of supervising the Colombian financial system in order to preserve its stability, security and reliability as well as to promote, organize and develop the Colombian stock market and the protection of investments, savings and underwriting.

[7] CHAPTER XVII
ILLEGAL EXERCISE OF FINANCIAL AND INSURANCE ACTIVITIES
ARTICLE 108. GENERAL PRINCIPLES
1. **Precautionary measures.** The Superintendence of Banks shall impose one or more of the following precautionary measures on natural or legal persons who conduct unauthorized activities outside the institutions under supervision:

Superintendence to impose one or more of the following precautionary measures on natural or legal persons who conduct activities outside the institutions monitored without proper authorization:

- Immediate suspension of such activities on penalty of imposition of graduated fines;
- Dissolution of the legal person; and
- Rapid and progressive liquidation of the illegal operations, for which the relevant administrative procedures set forth in the present Statute shall be applied, including seizure of assets, holdings and businesses of the financial institutions;
- Likewise, the article in question allows the Superintendence to impose penalties on any person who obstructs or impedes the administrative actions taken to establish the existence of potential illegal activities conducted outside the entities under supervision, as well as persons who provide false or incorrect information.

1.6 Pursuant to paragraph 1 (d) of resolution 1373 (2001), States should have in place mechanisms to register, audit and monitor the collection and use of funds

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a. Immediate suspension of such activities, subject to the imposition of successive fines up to 1 million pesos each;
b. Dissolution of a legal person; and
c. Rapid and progressive liquidation of the illegally conducted operations and application of the relevant administrative procedures set forth in the present Statute in cases involving seizure of assets, holdings and businesses of the financial institutions.
PARAGRAPH 1. In such cases the Superintendence of Banks shall institute the precautionary measures to ensure effectively the rights of third parties in good faith and, on its responsibility, shall proceed immediately to take the necessary measures to inform the public.
PARAGRAPH 2. The Superintendence of Banks may impose the sanctions contained in articles 209 and 211 on any person who obstructs or impedes the administrative actions taken to establish the existence of potential illegal activities outside the entities under supervision, as well as persons who provide it with false or incorrect information.
2. **Prohibited operations.** Factoring companies may not collect public funds on a large scale or a regular basis.
3. **State authorization to conduct underwriting activities.** Only persons with prior authorization from the Superintendence of Banks are duly authorized to perform insurance transactions in Colombia. Consequently, any other natural or legal person is prohibited from performing insurance transactions.
Contracts and operations concluded in violation of the provisions of this subparagraph shall have no legal effect, without prejudice to the right of the party to the contract or the insured to request the refund of the amount paid, the responsibilities of the person or entity to the party to the contract, the beneficiary or his assigns, and any penalties to be paid for the illegal exercise of an activity requiring the authorization and supervision of the Superintendence of Banks.
4. **Cooperative bodies that provide social security and assistance services.** In no case may entities of a cooperative nature which provide social security and services requiring a technical base similar to insurance portray themselves as underwriters and present as insurance policies the service contracts they offer.
5. **Use of the term "savings".** No bank, individual, society, collective company or corporation other than an entity duly authorized to use the term "savings" may use the terms "saving" or "savings" or its equivalents in its business or post a written announcement or sign that contains the words "saving" or "savings" or its equivalents, nor may any natural or legal person other than a duly authorized entity solicit or receive savings deposits in any form.

and other resources by charitable and similar non-profit organizations in order to ensure that these funds are not diverted from their stated purposes.

- **The Committee would welcome information on how this sector is regulated as well as additional details regarding verification of the financial accounting of its charitable organizations. Specifically, it would like to know whether verifications are conducted at the point at which the funds are received, who conducts such verifications and to what extent the competent authorities cooperate and coordinate their efforts to track funds and other resources received by organizations in order to ensure that they are not diverted to terrorist purposes; and**

- **In relation to the foreign operations of non-profit entities, what safeguards are in place to ensure that funds are not diverted abroad, and what forms of cooperation and exchange exist with the authorities of other States to prevent such diversion?**

There are currently no controls over the place at which non-profit entities receive funds. However, the UIAF conducts periodic follow-up on international remittances to study behaviour and identify operations that could be of interest.

Additionally, the Ministry of the Interior and Justice is responsible for dealing with requests for registration and recognition of the legal status of not-for-profit foreign entities under private law. This procedure legalizes the representation of not-for-profit foreign legal entities under private law that are domiciled abroad and establish permanent places of business in Colombia.

The following documentation is required to process such a request:

(a) Copy of the Act of Incorporation of the entity duly registered with the competent authorities of the country of origin.

(b) Copy of its Statutes, which should allow it to open branches in other countries.

(c) Copy of the Records of the General Assembly of the entity recording the membership of the Executive Board and its Legal Representative.

(d) Original of the General Power of Attorney given to its legal representative in Colombia.

(e) The legal representative in Colombia should appoint a plenipotentiary with the ability to represent it in legal matters.

(f) Written request addressed to the Secretary-General of the Ministry of the Interior and Justice.

In addition, the following entities, associations, corporations, foundations and public-interest institutions are required to register with the chambers of commerce:

- trade unions,
- charities,
- professional organizations,
- youth, social, democratic and participatory organizations,
- civic and community organizations.

- graduate associations,
- organizations for social rehabilitation and aid to the disadvantaged,
- social clubs,
- scientific, technological, cultural and research entities,
- entities whose purpose is the development of low-income housing plans and programmes, with the exception of those non-profit entities made up of families interested in building their own homes,
- parents' associations of any type,
- associations of educational institutions,
- non-profit or economic solidarity associations formed by parents and educators,
- agricultural and farmers' associations, both national and not, and second- and third-tier associations,
- corporations, associations and foundations created to work with the indigenous community,
- associations of co-owners, co-leaseholders and renters of shared housing and neighbours, different from the condominiums regulated by Act No. 182 of 1948, Act No. 16 of 1985 and Act No. 675 of 2001,
- environmental associations,
- cooperatives, federations and confederations, and auxiliary institutions of the cooperative movement and pre-cooperatives,
- employee funds,
- mutual associations,
- service companies established as general government cooperatives,
- community housing organizations,
- any other civic organizations, corporations, foundations and not-for-profit private entities not subject to exemption.

Without prejudice to the procedures described, the National Government is aware of the need to adopt unified channels for supervision of all non-profit organizations of various types in order to establish appropriate controls of the origin and destination of their funds and to avoid their diversion into illegal activities.

1.7 The Committee would be pleased to learn, without compromising any sensitive information, whether Colombia employs special investigative techniques for, inter alia,

- **Undercover operations;**
- **Tracking the funds of criminal groups;**
- **Intercepting communications; and**
- **Breaking up terrorist networks.**

Special investigative techniques are fundamental in establishing responsibility of persons committing illicit acts. Such techniques as following individuals and surveillance of persons and things, among others, have always been used. The techniques used by investigators are established by Act No. 906 of 2004, Code of Criminal Procedure of Colombia, as follows:

Surveillance and following of persons: "Without prejudice to the preventive procedures used by the security forces, in fulfilment of their constitutional duty and by authorization of the National or Sectional Director of Investigations, a prosecutor who has reasonable grounds, in accordance with the intelligence methods stipulated in this code, to infer that the suspect or the accused may lead him to gather information useful to the investigation he is conducting, may be authorized to order passive surveillance of the subject by the Judicial Police for a limited time period. If within the period of one year no results are obtained, the surveillance order shall expire; however, it may be renewed if new grounds should arise.

In the execution of the surveillance, any technically advisable method shall be employed. Photographs or videos may be taken, and in general, any related activity may be conducted that will allow relevant information to be gathered in order to identify or distinguish perpetrators or participants, the individuals and places they frequent and similar information, taking every precaution not to violate a reasonable expectation of privacy of the suspect or accused or of third parties.

In any case, authorization of the judge ensuring the legality of the trial and the rights of the accused shall be required to determine the formal and material legality of the order within 36 hours following its issuance by the Attorney-General.[8]

Surveillance of things: "The prosecutor directing the investigation, who has reasonable grounds, in accordance with the intelligence methods stipulated in this code, to believe that a building, vessel, aircraft or any other vehicle or structure is being used to warehouse addictive drugs, materials used in the processing of such drugs, or to conceal explosives, weapons, ammunition substances for the production of explosives and, in general, instruments for use in the commission of a crime or the goods and property gained through its execution, shall order the judicial police to monitor those places and structures, for the purpose of gathering information useful to the investigation being conducted. If within a maximum period of one year there are no results, the surveillance order shall expire, without prejudice to the possibility of its renewal if new grounds should arise.

In the execution of the surveillance, any appropriate method shall be employed, as long as it does not violate the reasonable expectation of privacy of the suspect, the accused or of third parties. In the latter case the provisions of article 239 shall be applied. In any case, the authorization of the judge ensuring the legality of the trial and the rights of the accused shall be required to determine its formal and material legality, within 36 hours following the issuance of the order by the Attorney-General.[9]

Analysis and infiltration of criminal organizations: "When a prosecutor has reasonable grounds, in accordance with the intelligence methods stipulated in this code, to believe that the suspect or the accused, in the inquiry or investigation being

[8] Article 239 of Act. No. 906 of 31 August 2004 (New Code of Criminal Procedure).

[9] Article 240 of Act No. 906 of 31 August 2004 (New Code of Criminal Procedure).

conducted, belongs to or is connected to any criminal organization, the judicial police shall order an analysis of that organization in order to learn its organizational structure, the level of aggression of its members and its weak points. It shall then order the planning, preparation and handling of an operation whereby an undercover agent or agents infiltrate it in order to obtain information useful to the investigation being conducted, in accordance with the provisions of the preceding article. The exercise and management of the actions covered in this article shall be subject to the budgets and limitations established in the international treaties ratified by Colombia".[10]

Actions of undercover agents: "When the prosecutor has reasonable grounds, in accordance with the intelligence methods stipulated in this code, to believe that the suspect or accused in the investigation in progress is continuing to conduct criminal activities, by authorization of the National or Sectional Director of Investigations, he may order the use of undercover agents when it is essential for the success of the investigation. In the use of this special power, he may order one or more officers of the judicial police, or even individuals, to perform criminal actions with legal immunity. As a result, those agents shall be authorized to intervene in commercial trafficking, enter into commitments, attend and participate in meetings in the workplace or home of the suspect or accused and, if necessary, conduct transactions with him. Likewise, if the undercover agent finds that the locations visited contain information useful to the investigation, the prosecutor shall be so informed and instruct the judicial police to carry out a special operation with a view to securing the information and the material elements of proof and physical evidence gathered.

Likewise, he may order an individual to act as an undercover agent; this individual, without changing his identity, would have the trust of the suspect or the accused or gains it for the purposes of seeking and gathering relevant information and material elements of proof and physical evidence. During the undercover operation, the technical methods of assistance covered in article 239 may be used.

In fulfilment of the provisions of this article, a review of the formal and material legality of the proceedings shall be conducted before the judge ensuring procedural legality and the rights of the accused within 36 hours after the termination of the undercover operation, to which shall be applied, as relevant, the rules for search and seizure. In any case, the use of undercover agents may not be extended for periods over one year, which may be extended for one more year with sufficient justification. If the period expires and no results have been obtained, the operation shall be cancelled, without prejudice to conducting the appropriate control of legality."[11]

Surveillance of deliveries: "A prosecutor who has reasonable grounds, in accordance with the intelligence measures stipulated in this code, to believe that the suspect or the accused directs or is involved in some way with the transport of weapons, explosives, ammunition, counterfeit money, addictive drugs, or if he is informed by an undercover or confidential agent of the existence of an ongoing criminal activity, on authorization of the National or Sectional Director of Investigations, may order surveillance of items whose possession, transport,

[10] Article 241 of Act No. 906 of 31 August 2004 (New Code of Criminal Procedure).

[11] Article 242 of Act No. 906 of 31 August 2004 (New Code of Criminal Procedure).

transfer, purchase, lease or simple ownership is prohibited. In this connection, surveillance of delivery is understood to mean that the merchandise is transported into or out of the country, under the surveillance of a network of judicial police officers with special skills and training.

In such cases, the undercover agent is prohibited from planting the idea of the commission of a crime in the mind of the suspect or accused. He is only authorized to make the delivery himself or through an intermediary, or to facilitate the delivery of the object of the illegal transaction, at the request or the initiative of the suspect or the accused. In the same way, the prosecutor shall authorize the judicial police to conduct special surveillance of operations originating outside the country in accordance with the provisions of the chapter on international judicial cooperation.

During the surveillance of delivery, if possible, appropriate technical means shall be utilized to allow the involvement of the suspect or the accused to be established. In any case, once the surveillance of delivery is completed, its results, and especially any material items of proof and physical evidence, shall be reviewed by the judge, ensuring the legality of the trial and the rights of the accused, within 36 hours in order to establish its formal and material legality."[12]

Secret operations being conducted

The Colombian State, in its efforts to prevent the financing of terrorism, through the Attorney-General of the Nation, is conducting criminal investigations of individuals or organizations that collect funds for criminal purposes, by attempting to identify their sources of financing and preparing operations that will lead to the dismantling of these criminal organizations. It receives support in that effort from the judicial police, in addition to the respective investigators and their assistants. The Central Directorate of the Judicial Police (DIJIN) has a special antiterrorist team that investigates all aspects of such criminal conduct, in accordance with strictly legal processes. This work has led to the execution of major operations with significant results, and has led to the capture of important leaders and members of terrorist organizations.

Location of funds of criminal organizations

In order to track the funds of terrorist organizations and criminal organizations in general, the National Police has signed agreements on exchange of information with such bodies as the Centre for Financial Information (CIFIN) and Datacredito, which collect in their databases information on the relationship of natural and legal persons linked to the financial system through such products as current accounts, savings accounts, credit cards and loan obligations to the financial sector, which has become an essential tool for establishing the financial structure of organizations skirting the law.

Through the Ministry of Finance and Public Credit, Colombia, more specifically the Intelligence and Financial Analysis Unit (UIAF), has developed an essential tool to combat organized crime and, in particular, money-laundering. This has been criminalized in the Penal Code (Act No. 599 of 2000), Title X, Crimes against the economic and social order, Chapter five, Money Laundering, article 323. The UIAF channels the information on suspicious transaction reports prepared by

[12] Article 243 of Act. No. 906 of 31 August 2004 (New Code of Criminal Procedure).

the Colombian financial system under the supervision and control of the Superintendence of Finance (previously the Superintendence of Banks). Mechanisms have been implemented for the detection and prevention of money-laundering through the Integrated System for the Prevention of Money-Laundering (SIPLA).

The Colombian officials designated to investigate the matter, in conducting their investigations, use the mechanisms provided by law and the established procedures that permit the freezing of accounts and assets:

By judicial means. In Colombia there is no administrative procedure for seizure of assets involved in criminal activities. Any action intended to initiate the process of State confiscation or termination of ownership rights — embargo, attachment, impoundment, capture, occupation or suspension of the power of disposal — of assets related to illicit activities, is exclusively by court order, in accordance with the provisions on exceptions to the right of ownership contained in the Political Constitution.

Any assets or resources related to a crime, including terrorism, may be confiscated through a criminal proceeding. Under this order, the State, through the provisions for confiscation and through a criminal trial, may lay claim to money or assets intended for the financing, maintenance or administration of terrorist activities or material assets resulting from a crime. As for the termination of ownership rights, it is a consequence of a crime, and requires a judicial ruling, and finally, it must follow the procedures outlined in Act No. 793 of 27 December 2002, abrogating Act No. 333 of 1996 establishing the regulations governing termination of ownership rights in Colombia.

The National Police, as part of State policy, has also deployed various means and actions to combat the financing of terrorism, among which should be noted:

- Strengthening of the Money-Laundering Group of the Central Directorate of the Judicial Police (DIJIN), extending its field of action to terrorist offences.
- Inter-institutional efforts to exchange information and judicialization of the crime with the Intelligence and Financial Analysis Unit of the Ministry of the Treasury.
- The establishment of the Antiterrorist Group in the Central Directorate of the Judicial Police and the strengthening of that objective in the Central Directorate of Intelligence in the National Police.
- The promotion of partnerships aimed at increasing information on terrorism at the global level, regarding organizations, methods of operation and other aspects of interest, in addition to their application and/or impact in the country.
- Establishment of strategic partnerships with other national and international intelligence agencies for exchange of information.

Interception of communications

Interception of communications is considered an essential investigative tool. In preliminary verification work, it allows the investigator to monitor the target (objective) and his contacts, and to have some basic sense of the nature and structure of the organization to which that individual belongs. Such interventions

must be conducted under strict judicial authorization, in order to guarantee the right of privacy established in the Political Constitution of Colombia.

The technique for interception is regulated by Act No. 906 of 2004, Code of Criminal Procedure, as follows:

> "The investigator may order, for the sole purpose of seeking material proof and physical evidence, that telephone, radio-telephone and similar communications utilizing the electromagnetic spectrum shall be taped or intercepted by other means, when the information is of interest for the purpose of the action. The agencies in charge of the technical operation for interception are required to conduct it immediately after notification of the order.
>
> In any case, the order must be given in writing. Individuals participating in such procedures are required to use due discretion. On no grounds may the communications of the Defender be intercepted. The order shall be in effect for a maximum period of three months, but it may be extended for a similar period if, in the judgement of the investigator, there are sufficient grounds to do so."[13]

Dismantling of terrorist networks

Under the Government's Democratic Defence and Security Policy, the Colombian authorities have aimed their efforts at dismantling criminal organizations through the use of such strategies as:

- Strengthening of international cooperation and coordination;
- Inter-institutional coordination for streamlining tasks and centralizing information;
- Strengthening of intelligence to prevent attacks and dismantle terrorist networks;
- Rapid reaction forces who take action based on intelligence obtained;
- Strengthening of technical capacity to optimize judicial investigation of terrorist acts;
- Cooperation of citizens.

1.8 The Committee is also interested to know whether Colombia has a witness protection programme. If so, please describe any specific features of that programme which apply to cases involving terrorism.

Since the entry into force of the Political Constitution of 1991, the Government has sought to establish mechanisms for an effective justice system that guarantees the rule of law and full enjoyment of the rights and freedoms recognized in the Constitution. The witness protection programme of the Office of the Attorney-General is one such mechanism. This programme is not limited to specific offences. It is implemented following a risk and threat assessment in order to determine the viability of enrolling the person in the protection programme, and the enrolment of the person participating in the investigation does not depend on the type of offence under investigation.

[13] Article 235 of Act No. 906 of 31 August 2004 (New Code of Criminal Procedure).

The witness protection programme was established in 1992 to address the issue of terrorism in Colombia. Colombia became the third country, after the United States and Italy, to create a witness protection programme as a consequence of intense violence and the rise in terrorist activity, which increasingly made witnesses reluctant to testify in criminal investigations. The programme is currently administered by the Office of the Attorney-General and grants protection and comprehensive assistance to witnesses and victims who provide important information at the trial leading to a successful criminal investigation, and whose lives are threatened or at high risk as a result of their collaboration with the judicial administration.

The Office of the Attorney-General adopts measures with the principle aim of protecting the lives and integrity of those enrolled in the witness protection programme. It does this by removing protected persons from areas where their lives are at greatest risk and helping them to integrate socially and find employment in a different location.

Abruptly leaving one's own environment for another location designated by the witness protection programme has a profound impact on the lives of the protected and as such, the Office must offer comprehensive services in order to mitigate the negative effects. This includes psychological, medical, dental, legal and financial assistance to allow protected witnesses to build lives based on a new reality and an assessment of their own abilities and interests.

The protection programme is autonomous in its protection of witnesses; it is in no way required to offer rewards or cover the financial obligations of witnesses, or to remove them from the country.

Protection is provided by the Special Protection Office to the witness or victim who has intervened in the trial proceedings and can be extended to that person's nuclear family, dependants or those whose direct relationships with the victim have caused proven threat and risk. In the Colombian accusatory criminal system, prior judicial involvement is not required for admission into the protection programme, since the witness or the victim-witness attains this status only at the trial.

Those who enter the protection programme must sign an agreement outlining the minimum obligations of the protected and of the protection programme. This document constitutes the framework for providing protection and assistance. The essential obligations of the protected are to comply with measures implemented by the programme to ensure their security and to continue cooperating in the criminal investigation in which they were participating or plan to participate. In any case, witnesses are free to opt out of the protection programme at any time.

Protection in each case may be terminated by the withdrawal of the witnesses, their dismissal for lack of compliance with the obligations set out in the agreement they signed or their permanent relocation away from the high-risk area.

1.9 The Committee has noted that draft legislative Act No. 02, adopted as an Act of the Republic in 2003, was declared null and void by the Colombian Constitutional Court in 2004. The Committee would be grateful to learn whether the Government considers that the court decision might affect its implementation of resolution 1373 (2001), and if so, what steps might be under consideration to address relevant concerns.

Legislative Act No. 02 of 2003, declared null and void by the Colombian Constitutional Court for procedural irregularity, sought to grant authorities additional effective tools in order to respond to a behaviour that, like terrorism, has been a recurrent issue in Colombia in its recent history. However, this declaration of null and void does not affect compliance with measures provided for in United Nations Security Council resolution 1373 (2001) since the new criminal procedure (Act No. 906 of 2004) provides for swift action on funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts, as required by the resolution.

To that end, the appropriate procedures are outlined in articles 83 to 85 of the Code of Criminal Procedure, as follows:

Article 83. *Precautionary measures for assets subject to confiscation. Seizure and possession of assets shall constitute material measures for guaranteeing confiscation, the suspension of the power to dispose of such assets shall constitute a legal measure to that end.*

These measures above shall be put into effect when there are reasonable grounds to infer that the assets or resources are the direct or indirect proceeds of fraud, that their value is equivalent to such proceeds, that they have been used or are intended for use as a means or instrument of fraud, or that they are the material object of such a crime, unless the assets are to be returned to the direct or indirect victims of the crime, or to third parties.

Article 84. *Measures for the seizure or possession of assets for confiscation. Within 36 hours of seizure or possession of assets or resources for confiscation, carried out by order of the Office of the Attorney-General or its delegate, or by action of the Judicial Police in the circumstances designated under this Code, the attorney shall appear before the judge ensuring the legality of the trial and the rights of the accused for a review hearing on the legality of the actions taken.*

Article 85. *Suspension of the power of disposal. When formulating the indictment or in a preliminary hearing, the attorney may request the suspension of the power of disposal of assets and resources for confiscation, which shall be maintained until final resolution of the matter or the assets are returned.*

On submission of the request, the judge ensuring the legality of the trial and the rights of the accused shall order the suspension of the power of disposal of assets and resources where he establishes one of the circumstances contemplated in article 83. If the judge determines that that is not the appropriate measure, the prosecutor shall examine whether there are grounds to terminate ownership rights, in which case he shall immediately take the necessary steps to that end.

In any case, in order to request the suspension of the power of disposal of assets and resources for confiscation, the prosecutor shall bear in mind the interest of justice, the value of the asset and the financial viability of managing it.

Furthermore, we refer to the observation made in the response to question 1.1 on the submission of an initiative to the Congress of the Republic on the adoption of measures to combat the financing of terrorism.

Effectiveness of controls preventing access to weapons by terrorists

1.10 With respect to paragraph 2 (a) of resolution 1373 (2001), on eliminating the supply of weapons to terrorists, Colombia has provided information on the relevant provisions in its Penal Code and Decree No. 2535. The Committee would appreciate additional information on the safeguards employed to prevent the smuggling or diversion of arms, ammunition and other weapons and their delivery to the various insurgency groups operating on its territory.

Colombia has a regulatory framework establishing controls to prevent the smuggling or diversion of arms, ammunition and other weapons and their delivery to the various illegal insurgency groups operating in Colombia.

First, article 223 of the Political Constitution of Colombia provides that: "Only the Government is entitled to import or manufacture arms, war munitions and explosives. No person shall be entitled to possess or carry them without a licence issued by the competent authority. Such licences may not be granted to persons either participating in or attending political meetings, elections, or meetings of public corporations or assemblies. Officials belonging to national security agencies and other standing official armed forces having permanent status and established or authorized by law are entitled to carry arms under governmental control, in accordance with the principles and procedures established by law."

Furthermore, articles 365 and 366 of the Colombian Penal Code punish anyone who, without a permit from a competent authority, imports, traffics, manufactures, stores, distributes, sells, supplies, repairs or carries firearms for self-defence, munitions or explosives whose use is the prerogative of the armed forces.

Among other regulations, Decree No. 2535 of 1993 establishes the requirements for possessing and carrying firearms, ammunition, explosives and accessories; renewing and suspending licences, the conditions for import and export of arms, ammunition and explosives; and the regulations for weapons facilities, shooting and hunting clubs and firearms collections and collectors. It also defines the grounds for the seizure and confiscation of weapons and the imposition of fines.

In light of the above, the Government, through its competent authorities, controls weapons as follows:

The Military Industry Board (INDUMIL), under the Ministry of Defence, is in charge of overseeing the manufacture and import of arms, ammunition and explosives.

The Department for the Control of Trade in Firearms, Ammunition and Explosives controls the sale of weapons and issues and renews licences for the possession and bearing of weapons, as well as special licences.

The Arms Committee of the Ministry of Defence is composed of two members from the Ministry of Defence, the Ombudsman or his Deputy, the Superintendent for Surveillance and Private Security or his Deputy, the Head of Department D-2 EMC of the General Command of the Military Forces, the Deputy Director of the Judicial and Investigative Police and the Chief of the Department for the Control of Trade in Firearms, Ammunition and Explosives, who consider and rule on petitions submitted by individuals regarding firearms, ammunition and explosives.

The Inter-Agency Group for Analysis of Terrorist Activities (GIAT) is in charge of tracking weapons from other countries that have been seized or surrendered in order to establish their origin, their place of manufacture and their final destination with the goal of countering the activities of arms smugglers.

Authorities competent to seize weapons

- All active-duty law enforcement officers in the discharge of their duties;
- Prosecutors, all judges, governors, mayors and police inspectors in their corresponding territories, through the Police, when they are aware of unauthorized ownership or bearing of a weapon, ammunition or explosive;
- The Agents of the Administrative Department of Security, in the discharge of their duties, and the members of the Judicial Police Units;
- Customs administrators and employees who inspect merchandise and baggage in the discharge of their duties;
- Prison guards;
- Commanders of vessels and aircraft during a voyage or flight, respectively.

Authorities competent to order the confiscation of weapons

- All prosecutors and criminal judges where a trial is being conducted in connection with the weapon, ammunition or explosive;
- Any major-general or officer of equal rank in the navy or air force within their jurisdiction and any commander of a Special or Unified Command;
- Any Commander of a Tactical Unit in the Army or officer of equal rank in the Navy or Air Force;
- Any police chief.

Concrete actions to prevent smuggling and trafficking in arms and ammunition

Bearing in mind that the major arms traffickers in Colombia are also involved in illegal drug trafficking (FARC, ELN and Autodefensas Unidas de Colombia — AUC), the Alta Montaña Battalion of the Military Forces, maritime patrols on Colombian rivers and seas by the navy, and the National Police mobile mounted police squad (EMCAR), established in the strategy for democratic security, have the goal of cutting off transport corridors to illegal groups. Furthermore, the Highway Patrol carries out continuous operations to prevent the transport of arms from region to region.

Yet the problem continues to increase while the great weapons-producing countries voice concerns about treaties and control over firearms trade. Colombia continues to work with the international community in several regional and international forums in order to unite efforts in the fight against illicit trafficking in firearms, ammunition and explosives, and to enhance the exchange of information and national experiences.

Several times the country has sought the support of the States in the region in order to ensure the full implementation of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives

and Other Related Materials, in particular with regard to exchanging information, tracking and marking weapons, and adopting national legislative measures.

In addition, Colombia, as a recent associate member of MERCOSUR, shares a new subregional forum in which to discuss this issue. As such, it participated in the seventh and eighth meetings of the Working Group on Firearms and Ammunition of MERCOSUR and its associate members, held in Paraguay in 2005 and in Argentina in April 2006, respectively. At both meetings, the progress made in the region thus far was reviewed in terms of the designation of national contact points, the creation of memorandums of understanding for information exchange, participation in the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LIREC) and the evaluation of multilateral agreements and negotiations to fight this scourge.

The most important outcome of the recent Buenos Aires meeting was the achievement of consensus on a common position to be presented at the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, to be held in New York from 26 June to 7 July 2006.

The members were able to agree on several important issues for Colombia, such as marking and tracking weapons and ammunition, the need to achieve progress on a legally binding instrument on brokering, effectively implementing assistance and cooperation and furthering consultations with a view to a possible treaty on illicit weapons transfer in order to prevent, inter alia, their diversion to non-State or non-government unauthorized actors.

Colombia would like to boost the programme and strengthen its capacity to regulate the possession of civilian weapons and the transfer of weapons to non-State actors and consolidate cooperation programmes on disarmament, demobilization and reintegration.

1.11 The Committee notes that Colombia regulates the possession, bearing, sale, manufacture and use of firearms by issuing appropriate licences. Please provide further information on how Colombia guards against the transfer of weapons from licensed persons/entities to terrorist and other groups.

Licences for regulating the bearing or possession of firearms

In Colombia, possession and bearing of arms is regulated and controlled by various State authorities. The regulation measures are set out in Decree No. 2535 of 1993 which defines the procedures and requirements for a person to legally acquire a weapon. In Colombia, the licence to bear arms is the authorization granted by the State to individuals or entities to possess or bear firearms, subject to the discretionary power of the competent military authority. Every firearm in the national territory in the possession of individuals must be covered by one licence to possess or bear firearms, for the authorized purpose.

Requirements regarding applications for licence to possess firearms. In order for a request for a licence to possess firearms to be considered, the following documents must be submitted:

Individuals

- Form issued by the competent authority, duly completed;
- Reservist or temporary military card;
- Photocopies of duly authenticated identity card and judicial certificate;
- Medical certificate attesting to applicant's psychological and physical fitness to use arms.

Entities

- Form issued by the competent authority, duly completed;
- Articles of incorporation and legal representative;
- Photocopies of legal representative's duly authenticated identity card and judicial certificate;
- Favourable opinion of the Superintendence of Surveillance and Private Security concerning the services it monitors.

In addition to the aforementioned, the applicant must explain why he needs firearms for his security and protection; that statement shall be evaluated by the competent authority. The rigorous procedures guarantee that even the legal transfer of weapons is not easy. When the holder of a licence to possess firearms wishes to transfer that right, he must present the weapon, and the person wishing to acquire it must submit the same documents in order to acquire it.

Furthermore, the weapons of private security services are periodically inspected in order to prevent their diversion or improper handling. In accordance with Decree No. 356 of 1994, Statute on Surveillance and Private Security Services, the licence to use the weapons may be revoked for the improper handling of weapons.

There are three types of licences:

Licence to bear firearms. This licence authorizes the holder to bear one firearm. The licence to bear self-defence firearms shall be valid for a period of three years, and the licence to bear self-defence firearms for restricted use shall be valid for one year.

Licence to possess firearms. This licence authorizes the bearer to keep the firearm at the stated location, whether it is his/her residence, place of work or a facility he/she wishes to protect. The licence to possess firearms shall be valid for 10 years.

Special licence. This licence is issued for the possession or bearing of firearms intended for the protection of diplomatic missions or duly accredited foreign officials. Any licences granted to a diplomatic mission shall be valid for four years. Licences issued to a specific official shall be valid for the duration of the official's mission. The General Command of the Military Forces may authorize the issuing of licences to possess or bear firearms and ammunition for the protection of diplomatic headquarters and their staff duly accredited with the Colombian Government, taking into account the practical circumstances of each mission or staff member.

Finally, under its firearms plan, the National Police constantly monitors the bearing of side arms through its national control points. It does a background check on the individuals who bear them, and reviews the registries of the weapon and the safe conduct for short-range firearms. Any person found with a long-range weapon who does not belong to a State security agency is investigated by the Office of the Attorney-General.

Effectiveness of international cooperation in criminal matters

1.12 Pursuant to paragraph 2 (b) of resolution 1373 (2001), States should take the necessary steps to prevent the commission of terrorist acts, including through the provision of early warning to and exchange of information with other States. Colombia indicated in its second report that it exchanges information with the International Criminal Police Organization (Interpol) and with intelligence agencies of countries and embassies in Colombia. The Committee would welcome:

- **Information about Colombia's efforts to provide administrative assistance and to exchange information with States other than those with embassies in its territory;**
- **An outline of the provisions, domestic and international, for the exchange of operational and intelligence information with other States and the provision of early warning on issues of concern;**
- **An outline of the administrative mechanisms and structures in place to facilitate this exchange.**

It is necessary to point out that the International Criminal Police Organization (Interpol) has 184 member countries and the I-24/7 System as a communication tool for judicial and police cooperation. In addition to this important tool, States that do not have an embassy in Colombia are assisted by National Central Bureaus (NCB) designated for each Interpol member State in order to take action in its territory. Decree No. 643 of 2004, on the restructuring of the Administrative Department of Security (DAS), established the functions of the Subdirectorate of Interpol — NCB.[14]

[14] Decree No. 643 of 2004

Article 31. Subdirectorate of Interpol — National Central Bureau. The following are functions of the Subdirectorate of Interpol — National Central Bureau:
1. To report to the Interpol Secretary General on the achievements of the national authorities in fighting various forms of crime for dissemination to the Interpol National Central Bureaus through its various publications. 2. To further Judicial Police actions necessary to fulfil the goals of the International Criminal Police Organization. 3. To issue recommendations on process and statistics with a view to preventing the various causes of national and international crime. 4. To take relevant measures and conduct investigations to locate Colombian nationals or aliens who are wanted by national or international authorities for extradition, and inform the requesting authorities and the Ministry of Foreign Affairs, which shall be charged with carrying out the necessary procedures for their transfer. 5. To coordinate with Interpol offices in various countries on operational activities related to the investigations carried out by its offices or by any national or international authorities. 6. To consult the competent authorities in various countries as to the current legal situation and possible conviction of Colombian nationals who have committed criminal offences abroad, as well as take necessary procedures to establish his/her full identity in order to update files and statistical registries. 7. To provide information to the National Central Bureaus and the Secretary General of the International Criminal Police Organization about the legal situation of aliens who may have committed criminal offences in Colombian territory. 8. To maintain a fluid exchange of information with member countries on

Book V of Act. 906 of 2004 (Code of Criminal Procedure) on international cooperation sets forth the general principle that *"investigative and judicial authorities shall have whatever is necessary to provide the international cooperation requested of them in accordance with the Political Constitution and the relevant international instruments and laws, in particular the development of the jurisdiction of the International Criminal Court"*.[15]

The same regulations provide that *"seeking wanted persons through red notices or the dissemination of information through the channels of the International Criminal Police Organization shall be valid on Colombian territory. In such an event the detained person shall immediately be placed in the custody of the Office of the Attorney-General. The Office of the Attorney-General shall communicate immediately with the Ministry of Foreign Affairs regarding the case and shall issue, within two working days, the order for capture for extradition if so required, as provided for by article 509 of this Code."*

In February of 2004 the National Police of Colombia signed the Agreement on Cooperation between the Government of the Republic of Colombia and the European Police Office for the exchange and analysis of strategic and technical information to fight serious forms of international crime. The National Police is also party to cooperation agreements with over 50 of its counterparts worldwide. Similarly, there are 60 accredited intelligence and investigation liaison officers from various agencies worldwide and 59 police liaison officers from 25 police investigative agencies worldwide.

Among other agreements and operational cooperation mechanisms that merit pointing out are the agreement leading to the formation of the Latin American and Caribbean Community for Police Intelligence (CLACIP), which is composed of members from 14 intelligence agencies from 13 countries, and the Agreement on Cooperation for Regional Security between the States Members of MERCOSUR, Bolivia, Colombia, Chile, Ecuador, Peru and Venezuela, which is being reviewed by the authorities.

The Military Forces have set up binational border committees (COMBIFRON) with Ecuador, Panama and Venezuela and high-level mechanisms on security and legal cooperation with Peru and Brazil. The mechanisms are used by the military forces of Colombia and their counterparts in neighbouring countries to discuss security issues and to reach an understanding on how to proceed in order to ensure greater efficiency and effectiveness in border-zone actions. In addition, the navy, army and air force have inter-institutional mechanisms and understandings with the military forces of neighbouring countries for the exchange of intelligence.

Furthermore, in an effort to confront the serious forms of international crime, Colombia is a party to several bilateral and multilateral agreements and conventions on mutual legal assistance in criminal matters and cooperation in dealing with

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international criminal activity. 9. To design and respond to national and international requirements. 10. To faithfully observe the various directives and regulations governing international police relations, bearing in mind the statute and general regulations of Interpol and the laws that are applicable in each particular case. 11. To implement the institutional strategic plan and formulate and implement such plans of action as may be necessary, in accordance with their nature, objective and function. 12. To carry out such other functions as may be assigned and are relevant to the work of the office.

[15] Article 484, Act No. 906 of 2004

various international crimes, such as the Inter-American Convention on Mutual Assistance in Criminal Matters, ratified by Colombia on 13 January 2003 and signed by 18 members of the Organization of American States. Colombia has concluded bilateral agreements with Argentina, Austria, Australia, Bolivia, Brazil, Canada, Cuba, Chile, China, Costa Rica, Ecuador, El Salvador, Spain, United States of America, Guatemala, France, Honduras, Israel, Jamaica, Mexico, the Netherlands, Panama, Paraguay, Peru, the United Kingdom, the Dominican Republic, the Russian Federation, Trinidad and Tobago, Uruguay and Venezuela, as well as regional agreements with, inter alia, the Andean Community, the European Union and Benelux.

Finally, with respect to cooperation and the exchange of information, Colombia is governed by the regulations and principles of international public law, in particular, the principle of reciprocity. In those countries that do not have embassies on Colombian territory or in which Colombia does not have an embassy, the ambassador accredited to those countries provides a channel of communication. If there is no ambassador accredited to a particular Government, it is the common practice to process requests through a friendly country. However, it is worth noting that Colombia has ambassadors accredited to nearly every country in the world.

1.13 The Committee notes from the third report that Colombia does not extradite persons accused of political crimes, with the exception of terrorist acts with political motivation, or for offences committed prior to the constitutional amendment contained in Legislative Act No. 01 (1997). Does Colombia apply the principle of *aut dedere aut judicare* (extradite or prosecute), under which it would prosecute the persons whose extradition is being sought for the offence(s) of which they are accused?

Colombia applies the principle of *aut dedere aut judicare* except when extradition has been refused for political crimes. In addition to the general provisions stating that Colombian penal laws apply to all persons who violate them in Colombian territory, article 16 of the Penal Code provides that, when the Government denies a request for the extradition of a foreigner who has allegedly committed an offence against another foreigner, the State shall prosecute.

It is incumbent on the Government, through the Ministry of the Interior and Justice, to grant the extradition of a person who has been convicted or tried abroad. The Government has the authority to grant extradition but it must have prior approval from the Supreme Court of Justice.

The requirements set forth in the Code of Criminal Procedure (Act No. 906 of 2004) are as follows:

1. The grounds for extradition must constitute a crime under Colombian law and must be punishable by at least four years' incarceration;

2. At a minimum, the requesting State must have issued an indictment or the equivalent thereof.

When granting extradition, the Government may set any conditions it deems necessary. In all cases, it must demand that the subject of the extradition not be tried for a prior act unrelated to the act for which he or she is being extradited. In addition, the requesting country may not impose penalties that are not assigned in the sentence.

If the legislation of the requesting State provides that the offence which is the subject of the extradition is punishable by death, the offender shall be handed over only on the condition that the death penalty is commuted and that the offender is not subjected to forced disappearance, torture or other cruel, inhuman or degrading treatment or punishment, banishment, life imprisonment or confiscation.

1.14 Paragraphs 3 (d) and (e) of resolution 1373 (2001) call upon States to become parties, as soon as possible, to the relevant international conventions and protocols relating to terrorism. The Committee notes that Colombia has become party to nine international counter-terrorism instruments. The remaining instruments are the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Acts of Nuclear Terrorism. How does Colombia intend to proceed with respect to these international instruments?

Colombia has been working to achieve the effective implementation of all international instruments and mechanisms, with a view to closing the gaps that enable the financing, movement and activities of terrorist organizations, through immediate and unhindered international cooperation. In that connection, the country continues to move towards the ratification of all international instruments relating to terrorism and, as proof of its commitment, became a State party to the International Convention for the Suppression of Terrorist Bombings (ratification: 14 September 2004, entry into force: 13 October 2004); the International Convention for the Suppression of the Financing of Terrorism (ratification: 14 September 2004, entry into force: 13 October 2004); and the International Convention against the Taking of Hostages (accession: 14 April 2005, entry into force: 14 May 2005).

Furthermore, it will soon complete the procedures for adopting the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991). Bill No. 249/05 was submitted on 4 April 2005 and adopted by the National Congress on 7 June 2006. It is currently awaiting presidential ratification.

However, taking into account that, by Act No. 830 of 10 July 2003, the National Congress adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, and that the Constitutional Court declared the approbatory law unenforceable in Judgment No. C-120 of 17 February 2004, owing to formal defects in the legislative procedure, the Maritime and Ports Office (DIMAR) recommended that a new legislative procedure should be initiated once the amending protocols being negotiated within the framework of the World Maritime Organization (WMO) were adopted.

Considering that the texts of the amending protocols were adopted at the Diplomatic Conference on the Revision of the SUA Treaties, held in October 2005, and that those instruments incorporate new aspects of judicial cooperation in criminal matters and cooperation mechanisms such as extradition, the Government is engaged in the necessary domestic consultations to begin the process of ratifying those instruments.

With respect to the International Convention on the Suppression of Acts of Nuclear Terrorism, which was opened for signature on 14 September 2005, the Government has begun the necessary domestic consultations for signature and subsequent ratification. Thus far, all the competent bodies consulted have given their approval. The general view is that this instrument is fully in line with Colombia's position on counter-terrorism and that it is an important tool for preventing and punishing acts of nuclear terrorism.

1.15 With respect to the implementation of paragraph 3 (a) and (c) of resolution 1373 (2001), the Committee notes that Colombia has signed treaties and agreements on cooperation with States in its own region and with a number of European States. The Committee would be interested in receiving information on Colombia's plans to conclude treaties and agreements with a larger number of States so as to widen its network of formal relationships and arrangements allowing for expeditious cooperation in the prevention and suppression of terrorist acts.

As mentioned in section 1.12, Colombia has concluded bilateral and multilateral agreements and conventions and participates in international organizations and mechanisms to facilitate international cooperation and the exchange of information. In the area of cooperation, Colombia is governed by the norms and principles of public international law, in particular, the principle of reciprocity.

In this regard, in cases where a country does not have an embassy in Colombia or Colombia does not have an embassy in the other country, the accredited ambassador is used. If there is no such ambassador, cooperation requests are processed in a friendly country. However, it should be pointed out that Colombia has accredited ambassadors in almost every country in the world.

Although Colombia is already party to a broad range of bilateral, regional and multilateral conventions, it is always ready to expand its cooperation with other countries. To this end, the Government carefully considers the nature of the bilateral relationship and the common problems so that it may conclude appropriate conventions and agreements.

On 19 April 2005, the Government signed the Colombia-Paraguay Plan of Action for Security Matters. The Plan, which is being fully implemented, focuses on combating illicit drugs, arms trafficking, kidnapping, terrorism, strengthening institutions and exchanging intelligence. It is currently studying the possibility of signing similar plans of action with the Government of Chile and CARICOM.

Colombia has also established high-level panels on security and justice with Costa Rica, Guatemala, Mexico and Peru with a view to developing a coordinated approach to combating terrorist acts, illicit trafficking in drugs and related crimes, kidnapping, trafficking in migrants, illicit trade in firearms and explosives and other acts of transnational organized crime.

Effectiveness of customs, immigration and border controls

1.16 Pursuant to paragraph 2 (c) and (g) of resolution 1373 (2001), States should ensure the enforcement of effective immigration, customs and border controls in order to prevent the movement of terrorists, the establishment of safe havens and

the commission of terrorist acts. The Committee would be grateful to receive details regarding:

- **The extent of cooperation and coordination between the different agencies with border control responsibilities, including the modalities and tools used and example of the results of any joint activity:**

The Administrative Department of Security (DAS) includes national branches of Interpol and the Subdirectorate of Immigration. These bodies serve as channels of communication and help to facilitate legal and police cooperation among the 184 member countries of Interpol by exchanging information on international terrorist organizations through the Interpol Red Notice (Wanted with a view to extradition). This information is shared with the 26 sectional directorates and 29 ports of migration control in Colombia, through the Department's SIFDAS database.

As a result of this cooperation, Colombia requested the posting of 316 Red Notices for members of terrorist groups operating in the country. At the time of writing, 10 people have been located and captured, with the cooperation of the counterpart Interpol and immigration offices in Venezuela, Brazil, Ecuador, the United States of America, Panama and Spain.

Colombian customs legislation provides for legal and/or administrative restrictions on the entry of certain goods into the country, unless exemptions are granted by the competent monitoring agency. When the Directorate of National Taxes and Customs (DIAN) seizes goods such as arms, explosives, or precursors, they are stored at the Ministry of National Defence, the Office of the Attorney-General or other State security agencies, depending on their competence. To control the entry and exit of goods, the different monitoring agencies perform simultaneous inspections at ports, airports and border zones at the "Centros Nacionales de Atención en Frontera" (a group of offices and installations where inspections are carried out) and at counters set up by the Ministry of Foreign Trade. This system also makes it possible to issue permits and authorizations via an electronic tool that facilitates consultation among the different State security agencies.

In order to detect the flow of money, DIAN also monitors the entry and exit of foreign currency or legal Colombian currency in excess of US$ 10,000 or the equivalent in another currency; in accordance with the legislation governing this activity, only security transport companies or foreign exchange dealers are permitted to bring into or take out of the country foreign currency or legal Colombian currency. Foreign currency or legal Colombian currency brought into or taken out of the country by security transport companies must be declared using the relevant form and in accordance with the required conditions. The provisions governing foreign exchange apply to all natural and legal persons, whether public or private, including foreign exchange dealers who are acting on their own behalf or on behalf of third parties. They do not apply to the Bank of the Republic, since it is the administrator of the international reserves. Remittance transactions by foreign exchange dealers must be carried out through security transport companies.

- **The control strategies and methods that the Directorate of National Taxes and Customs (DIAN) uses to protect shipments entering and exiting its territory, using all modes of transport, from acts of terrorism and the role of the World Customs Organization (WCO) Framework of Standards to**

Secure and Facilitate Global Trade in Colombia's border control strategy; and

As part of the border control strategy, the Directorate of National Taxes and Customs (DIAN) monitors imports in two stages. Shipments are inspected upon arrival and/or during the declaration procedures. Imports are selected for inspection based on risk analysis techniques, confidential information, and at random.

DIAN is working to strengthen its operational capacity and improve its exchange of information with other national agencies that monitor imports on their arrival. With respect to the facilitation and control of foreign trade operations, Colombian customs regulations take into account certain aspects of the customs/business structure, such as frequent customs users and high-volume exporters, and establish criteria to facilitate foreign trade based on the volume of operations and the degree of confidence that the customs authorities have in those users, provided that the latter meet the requirements to be classified as frequent customs users and/or high-volume exporters.

Similarly, lawmakers are currently preparing legislation which gives preferential treatment to the customs brokerage companies that offer DIAN maximum guarantees with respect to security, quality and reliability of service. Colombia is preparing the legal and financial framework for the use of modern technology, in particular, non-obtrusive inspection equipment, taking into account monitoring requirements, the amount of space needed to perform the customs inspections and the amount of investment required to implement the technology nationally.

DIAN is working on the formulation of guidelines and is currently developing a comprehensive information system called the "Single Model for Revenues, Service and Computerized Control" (MUISCA). With the support of modern technology, this system helps the different users to fulfil their obligations and exercise their rights during the conduct of foreign trade operations. MUISCA enables DIAN to manage customs control in a new way that incorporates areas, users, concepts and data. This model will replace the systems currently in use. To ensure a more accurate assessment and more efficient screening, it includes functions such as the electronic transmission of data on foreign-trade operators, routine advance information and descriptions of the shipments, taking into account subjective factors such as the "risk index of the operator".

- **The mechanisms and safeguards in place to detect and prevent the movement of terrorists across State borders at crossings where there is no official control monitoring.**

The Administrative Department of Security (DAS) controls the documentation, activities and immigrant status of foreigners in Colombia and verifies information contained in judicial and national and international intelligence databases. Immigration controls include the deportation/expulsion of foreigners sought by foreign Governments, legal action or extradition proceedings when circumstances so require.

DAS also monitors hotel establishments, which are required to inform the immigration authorities of the arrival and departure of their clients. Foreign university students and all foreigners working in public and private companies are

also monitored. This continuous monitoring makes it possible to detect and prevent the movement of terrorists across the Colombian border.

DAS officials — who are responsible for immigration control at the national level — focus their intelligence activities and operations on the detection of terrorists who transit or reside in unauthorized zones through the following actions:

- Verification of information obtained from sources, reports, interviews and as a result of other initiatives in order to confirm or discredit it;
- Periodic monitoring of zones reported to be clandestine routes for the illicit transit of persons;
- Exchange of information with other agencies (the army, navy, air force and National Police) through intelligence reports on illegal trafficking in persons. This exchange has triggered joint operations to prevent such trafficking;
- Exchange of information with the immigration authorities of neighbouring countries so that they may take concerted action to deal with the problem.

1.17 Would Colombia describe the measures in place to detect and prevent the illicit cross-border movement of weapons, munitions and explosives?

In Colombia, the various authorities conduct numerous controls to detect and prevent the inflow and trafficking of arms:

- The customs officials who are responsible for inspecting goods and baggage at ports have the authority to seize firearms being brought into the country illegally and turn them over to the competent judicial authority.

In the discharge of their duty to maintain the sovereignty and territorial integrity of Colombia, the armed forces and the National Police carry out multiple operations including:

- Checkpoints to detect persons with records and/or persons who are carrying or transporting illegal weapons;
- Patrols to cut off strategic routes used by illegal groups;
- Searches and monitoring;
- The judicial police units of the National Police, the Office of the Attorney-General and the Administrative Department of Security carry out investigations to collect evidence and prosecute persons and groups involved in illicit trafficking of weapons, ammunition and explosives;
- Intelligence units of the Armed Forces, the National Police and the Administrative Department of Security gather information to help prevent arms trafficking in Colombia;
- The Government has set up binational border commissions (COMBIFRON), which meet regularly, and has concluded agreements with neighbouring countries to assess border problems, pool efforts and combat illicit arms trafficking;
- Confiscated unauthorized weapons and weapons turned over by ex-combatants are melted in a plant located in the city of Sogamoso-Boyacá.

Military border units, the Customs Office and the DAS Immigration Division carry out strict controls at ports and illegal crossing points to prevent the entry of weapons and other logistical items bound for terrorist groups operating in Colombia.

The Colombian Air Force is developing an air-traffic interdiction programme, with the support of the United States. The programme facilitates the reconnaissance of pirate aircraft transporting illicit drugs and weapons from Venezuela, Brazil, Panama and other countries. Unregistered or unlicensed aircraft are forced to land and the cargo is inspected. Colombia also has cooperation agreements with the Armed Forces of Brazil and Peru.

The Administrative Department of Security (DAS) is promoting arms tracking through the Interpol office using the Interpol I-24/7 system, which provides access to the databases of all 184 member countries. This makes it possible to establish whether a person involved in illicit trafficking of weapons, ammunition and explosives has a criminal record and enables national agencies to request Interpol to track weapons (place of manufacture, importation etc.), with a view to verifying the origin and final users and provide background information on individuals. This cooperation has facilitated the dismantling of international arms trafficking organizations.

In addition, DAS has links with foreign agencies such as the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the United States Secret Service, the Federal Bureau of Investigation (FBI), the customs and immigration office of the United States embassy in Bogotá, the Australian Federal Police and attachés from other diplomatic missions in Colombia. They share intelligence and legal information with a view to combating transnational crime, particularly trafficking in weapons and explosives and terrorism.

The Inter-Agency Group for Analysis of Terrorist Activities (GIAT), which includes DAS and the army, performs inspections of confiscated weapons that are in the custody of the armed forces and the police.

Colombia is a party to the following instruments and mechanisms for countering arms trafficking and terrorist activities in cooperation with neighbouring countries:

- The Colombia-Ecuador Commission on Neighbourly Relations, which deals with trade issues, immigration, border security, drug trafficking, terrorism and illicit trade in small arms;
- The Colombia-Peru high-level mechanism on security and legal cooperation, which deals with the illicit exploitation, trafficking and sale of wood and gold in the Amazon region, arms and drug trafficking and organized crime;
- The Colombia-Panama Commission on Neighbourly Relations, which deals with legal cooperation and the control of trafficking in chemical substances and other offences;
- The Agreement on Police Cooperation between Colombia and Panama, which focuses on counter-terrorism, drug trafficking, transnational and organized crime, an exchange of experiences on citizen security and police training;

- Binational border commissions with Ecuador and Panama and the Colombia-Brazil Commission on Neighbourly Relations. Colombia is also participating in the establishment of the "Group against Crime and Terrorism".

1.18 With regard to aviation security, the International Civil Aviation Organization (ICAO) recently launched a universal security audit programme to ensure that all Contracting States comply with Annex 17 to the Convention on International Civil Aviation. Has Colombia encountered any difficulty in applying Annex 17?

If so, please explain what kind of difficulties and the standards concerned.

In August 2005 Colombia was the subject of an audit carried out under the Universal Security Audit Programme (USAP) by a team of ICAO auditors. As a result of the audit, it is observed that "... Colombia has made considerable efforts and progress in applying the standards and recommendations of Annex 17 to the Convention on International Civil Aviation and has benefited from resources under the Inter-American Development Bank programme". The audit also highlighted the leadership offered by the Special Administrative Unit for Civil Aviation (Aerocivil) in its capacity as the authority responsible for overseeing the application of civil aviation security measures (AVSEC).

Aerocivil has received the relevant observations, which mostly refer to the updating and enhancement of airport security standards. The auditors' recommendations concern improvements to the five main elements common to several of the audited States in the Latin American and Caribbean region, namely:

1. NATIONAL PROGRAMME FOR TRAINING IN AIRPORT SECURITY: Colombia has a National Airport Security Programme. Resolution No. 0892 of 2004 contains provisions on training in airport security, the target population, a thematic index, the level of instructors and the process of career-long training in aviation security designed to ensure that staff have the highest level of knowledge and develop the necessary skills to carry out their work effectively. ICAO has requested that various aspects of the Programme be developed and specified.

2. NATIONAL QUALITY CONTROL PROGRAMME: Aerocivil needs to improve components of the quality control programme, in particular, by incorporating more detailed procedures to be scrupulously followed by anyone taking part in security schemes. Detailed explanations must be given with regard to all aspects of airport infrastructure, the certification of staff assigned to airport security, quality controls of the operational part and surveillance of staff forming the aviation security chain. Nonetheless ICAO has not issued any specific guidelines on this issue.

3. NATIONAL CIVIL AVIATION SECURITY PROGRAMME (PNSAC): It was recommended that the National Programme should be extended and adapted to the latest amendments to Annex 17 and that greater attention should be focused on ensuring consistency between the above-described programmes and the airport and operator security plans and emergency plans. In this review, consideration should be given to bringing cargo agent staff under the control and surveillance of the Aviation Authority.

4. STRENGTHENING INTERNATIONAL COOPERATION: In this connection, USAP recommends that cooperation agreements be drawn up with neighbouring

States, the States of international operators and other organizations, in order to increase the flow of information related to the prevention of terrorism or acts of unlawful interference, and also to strengthen contingency mechanisms.

5. UPDATING THE AIRPORT AND AIRLINES SECURITY PLAN: USAP recommends that airport and airline security plans should contain more detailed airport security procedures.

Bearing in mind the recommendations made by the team of auditors and the need for facilitation, which is inextricably linked with aviation security, the Special Administrative Unit for Civil Aviation has designed two projects aimed at finding sources of funding: "Strengthening Airport Security in the Caribbean and South America Region" and "Development and accreditation, using the ICAO TRAINAIR methodology, of a course based on a set of standardized teaching materials for training staff verifying Machine Readable Travel Documents (MRTDs) in facilities installed for that purpose".

2.1 What measures does Colombia have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Depending on the case in question, incitement to commit a terrorist act or acts falls within the scope of the provisions relating to perpetration and participation contained in articles 29 and 30, respectively, of the Criminal Code:

Article 29.

A perpetrator is a person who commits a punishable act alone or using another person as a means of doing so.

A co-perpetrator is a person who, on the basis of an agreement, assumes a role in committing the criminal act while aware of the implications of that role.

A perpetrator is also a person who, acting as an authorized or de facto member or representative of a legal person or of a collective entity that is not legally recognized, or unlawfully representing an individual, commits a punishable act, even if the specific criteria that determine the liability of the offender apply not to that member or representative but to the person or collective entity that is represented.

A perpetrator as defined above shall be liable to the penalty established for the punishable act.

Article 30.

A participant is either the mastermind of or an accomplice to a punishable act.

Any person who instructs another to commit an illegal act shall be liable to the penalty established for that offence.

Any person who assists in the commission of an illegal act or lends assistance subsequent to that act, by prior agreement or at the time the act is committed, shall be liable to the penalty established for the offence reduced by between one sixth and one half.

For any person whose involvement in the commission of the act is of a nature that is not provided for under the relevant provisions, the penalty shall be reduced by one quarter.

As can be seen, the penalties to which the co-perpetrator and the mastermind are liable are similar, i.e., both are liable to the penalty established for the punishable act.

Specifically, articles 348 and 349 of the Criminal Code establish instigation to commit an offence as a criminal offence under the following provisions:

Article 348. Instigation to commit an offence.

Any person who publicly and directly incites another person or persons to commit a specific offence or type of offence shall be liable to a fine.

If the act is engaged in for the purpose of committing the crimes of genocide, enforced disappearance, extortive kidnapping, torture, forcible displacement or homicide **or for terrorist purposes**, the penalty shall be a term of imprisonment of between 80 and 180 months and a fine of between 666.66 and 1,500 times the minimum statutory monthly wage.

Article 349. Incitement to commit military offences.

Any person who, in support of terrorist activities, incites members of State law enforcement or security agencies to desert or abandon their posts or service, or who takes any action to achieve that objective, shall be liable to a term of imprisonment of between 32 and 90 months and a fine of between 13.33 and 150 times the minimum statutory monthly wage.

Separate provisions have also been created to penalize acts linked to terrorism, such as aggravated conspiracy to commit an offence, training for terrorist activities, management of resources linked to terrorist activities and incitement to commit military offences in support of terrorist activities:

Article 340. Conspiracy to commit an offence.

When a number of persons conspire for the purpose of committing offences, each of them shall, for that act alone, be liable to a term of imprisonment of between 48 and 108 months.

When the conspiracy involves the commission of the crimes of genocide, enforced disappearance, torture, forced displacement, homicide, terrorism, trafficking in toxic or narcotic drugs or psychotropic substances, extortive kidnapping, extortion, unlawful enrichment, money-laundering or fronting and related crimes, or the organization, promotion, arming or financing of illegal armed groups, the penalty shall be a term of imprisonment of between 96 and 216 months and a fine of between 2,666.66 and 30,000 times the minimum statutory monthly wage.

The penalty of deprivation of liberty shall be increased by one half for any person who organizes, encourages, promotes, directs, heads, establishes or finances a conspiracy for the purpose of committing an offence.

Article 341. Training for illicit activities.

Any person who trains persons in military tactics, techniques or procedures or organizes, instructs, equips or recruits them for the purpose of conducting terrorist activities or forming death squads, vigilante groups or groups of hired assassins, shall be liable to a term of imprisonment of between 240 and 360 months and a fine of between 1,333.33 and 30,000 times the minimum statutory monthly wage.

Article 345. Management of resources linked to terrorist activities.

Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between 96 and 216 months and a fine of between 266.66 and 15,000 times the minimum statutory monthly wage.

In addition, the following related acts have been established as criminal offences:

Article 102. Advocation of genocide.

Any person who, by any means, disseminates ideas or doctrines that support or justify acts constituting genocide, or who seeks to reinstate regimes or institutions that defend practices giving rise to such acts, shall be liable to a term of imprisonment of between 96 and 180 months, a fine of between 666.66 and 1,500 times the minimum statutory monthly wage and disqualification from exercising rights or holding public office for 80 to 180 months.

Article 367-B. Assistance and inducement to use, produce and transfer anti-personnel mines.

Any person who instigates, helps, enables, encourages or induces another person to participate in any of the activities provided for in article 367-A of the Criminal Code shall be liable to a term of imprisonment of between 96 and 180 months and a fine of between 266.66 and 750 times the minimum statutory monthly wage.

Lastly, articles 182 to 185 of the Criminal Code establish coercion and coercion to commit an offence as related offences and provide for the aggravating circumstances applicable to each case:

Article 182. Coercion.

Any person who, except in cases for which specific provision is made, forces another person to carry out, condone or refrain from an action, shall be liable to a term of imprisonment of between 16 and 36 months.

Article 183. Aggravating circumstances.

The penalty shall be increased by between one third and one half if:

1. The purpose or objective pursued by the agent is of a terrorist nature;
2. The agent is a member of the family of the victim;

3. The agent abuses a position of seniority or authority in an educational, working or similar environment.

Article 184. Coercion to commit an offence.

Any person who forces another person to commit a punishable act, provided that such act does not constitute an offence carrying a more severe punishment, shall be liable to a term of imprisonment of between 16 and 54 months.

Article 185. Aggravating circumstances.

The penalty shall be increased by between one third and one half if:

1. The objective of the act is to induce persons to become members of terrorist groups, groups of hired assassins, death squads or vigilante groups;

2. The persons who are the objects of the act are minors under 18 years of age or active-duty or retired law enforcement officers or members of State security agencies;

3. In the cases indicated in article 183.

Thus, Colombia has an adequate legislative framework for the prevention and punishment of incitement to commit terrorist acts.

2.2 What measures does Colombia take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

When granting refugee status, Colombia complies strictly with the provisions of the Convention relating to the Status of Refugees of 1951, article 1 (F) of which establishes the following with regard to exclusion:

Article 1. — Definition of the term "refugee"

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

In addition, Decree No. 2450 of October 2002 establishes the procedure for determining refugee status and also establishes the Advisory Committee on the Determination of Refugee Status.

The Decree provides that the Deputy Minister for Multilateral Affairs shall preside over the Advisory Committee, and under article 12 establishes that, in order to determine refugee status, "The Advisory Committee may, where it deems

appropriate, request information from the security authorities of the country concerned, or from foreign authorities through Colombian embassies or consulates abroad, exercising due caution so as not to endanger the life or safety of the person seeking refugee status."

In that regard, it should be noted that before refugee status is granted, the information provided by each applicant is verified by the Administrative Department of Security (DAS), Interpol, other international, governmental and non-governmental bodies and through other available information systems.

In addition, Decree No. 2450, in accordance with the applicable conventions, establishes the following provisions for the suspension of refugee status:

Article 19.

The Ministry of Foreign Affairs may decide, through a resolution, to suspend or revoke refugee status. The Advisory Committee on the Determination of Refugee Status is responsible for reviewing cases and taking decisions, subject to the provisions established under the Convention relating to the Status of Refugees, signed in Geneva in 1951, and taking into account the relevant resolutions of the United Nations Security Council and the Handbook on Procedures and Criteria for Determining Refugee Status prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR).

Article 20.

The Advisory Committee on the Determination of Refugee Status, in accordance with articles 32 and 33 of the Convention relating to the Status of Refugees, adopted in Geneva on 28 July 1951, shall examine cases of expulsion as provided for under those articles and shall make the appropriate recommendations, which shall not be binding, to the Ministry of Foreign Affairs.

In the event of a decision to expel a refugee, the Ministry of Foreign Affairs shall notify the Administrative Department of Security (DAS) in order for the latter to take the appropriate action in accordance with its competence in matters relating to migration control.

Lastly, it should be noted that Colombia is a State party to the Convention on Asylum of 1928 (Havana Convention), the Convention on Political Asylum of 1933 (Montevideo Convention) and the Convention on Territorial Asylum of 1954 (Caracas Convention).

The Convention on Asylum of 1928 states explicitly that States may not grant asylum to persons accused of common offences, limiting the right to asylum to persons who have been treated as political offenders. The Convention on Political Asylum of 1933 introduced three vital elements: firstly, it limited the right to asylum to persons accused of political offences, i.e., persons formally accused in ordinary court proceedings; secondly, it established that the nature of the offence was to be determined by the asylum State; and lastly, it established asylum as an institution of humanitarian character.

The Convention on Diplomatic Asylum of 1954 (Colombia signed both the Convention on Territorial Asylum and the Convention on Diplomatic Asylum, but ratified only the former) states that "Every State has the right to grant asylum; but it is not obligated to do so or to state its reasons for refusing it", and establishes the obligation to respect asylum granted "to persons being sought for political reasons or for political offences". It also establishes that it is not lawful to grant asylum to persons who are under indictment or on trial for common offences, and that "it shall *rest with the State granting asylum to determine* the nature of the offence or the motives for the persecution". Lastly, asylum may not be granted except in urgent cases:

> "Urgent cases are understood to be those, among others, in which the individual is being sought by persons or mobs over whom the authorities have lost control, or by the authorities themselves, and is in danger of being deprived of his life or liberty because of political persecution and cannot, without risk, ensure his safety in any other way"[16]

and for the period of time strictly necessary.

Paragraph 2

2.3 How does Colombia cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

The Administrative Department of Security (DAS) has an automated information system called SIFDAS, through which it interacts with 26 Sectional Directorates and 29 ports of immigration control in the country. This system possesses the following databases that allow it to control national and foreign travellers and to take the pertinent immigration and judicial measures:

- Register of entry of foreigners who are members of or collaborate with international terrorist organizations and whose names are disseminated by the United Nations Security Council;
- Register of terrorists reported by other international agencies;
- Circulars and other information distributed by Interpol;
- Register of foreign travellers in hotels;
- Database of lost or stolen Colombian and foreign passports;
- Immigration records of Colombian and foreign travellers;
- Foreigners involved in legal proceedings in Colombia;
- List of individuals prohibited from leaving the country or for whom an arrest warrant has been issued;
- Register of foreigners who have been deported, expelled or extradited, and are barred from entering the country.

[16] Article VI of the Convention.

In addition, Colombia has signed agreements and understandings with Panama, Ecuador and the United States, with which it holds periodic meetings on issues related to migratory regulations, mechanisms for detecting fraudulent documentation, organizations devoted to migrant trafficking and trafficking in persons, and the detection of possible international terrorists.

Paragraph 3

2.4 What international efforts is Colombia participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Colombia is a country that has been increasingly affected by the phenomenon of terrorism, because the illegal armed groups operating in Colombia use terrorism to attack the civilian population and weaken national democratic governance. Nevertheless, the Government of Colombia does not consider that the violence caused by these groups falls within the scope of resolution 1624 (2005), as the political violence the country has endured for decades is not the result of extremism or intolerance dividing the country for racial, cultural or religious reasons.

Colombia is playing an active role in the development of a global counter-terrorism strategy that promotes comprehensive, coordinated and consistent responses to counter-terrorism at the national, regional and international level, with full respect for human rights, as called for by the Secretary-General of the United Nations. The strategy is composed of five elements: (i) to dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals; (ii) to cut off access to the means to carry out a terrorist attack; (iii) to deter States from supporting terrorists groups; (iv) to develop State capacity to prevent terrorism; and (v) to defend human rights in the fight against terrorism.

2.5 What steps is Colombia taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

As mentioned above, Colombia has an appropriate legal framework for preventing and punishing the incitement of terrorist acts. Nevertheless, the violence caused by the illegal armed groups operating in the country does not fall within the scope of resolution 1624 (2005), as the political violence that the country has endured for decades is not the result of extremism or intolerance dividing the country for racial, cultural or religious reasons.

The country has been participating in formal and informal discussions on the adoption of such a strategy within the framework of the Group of Friends for the Reform of the United Nations. It has emphasized the need to promote dialogue and improve understanding between civilizations and cautioned against identifying terrorism with specific religions and cultures, since this further delays the settlement of unresolved conflicts and may promote the discontent felt by some groups of the population. In order to continue consultations on the report of the Secretary-General on "Uniting against terrorism: recommendations for a global counter-terrorism strategy", Colombia convened a meeting of the Group of Friends for the Reform of the United Nations, which took place in Cartagena in May 2006. The Group,

comprised of Algeria, Australia, Canada, Chile, Colombia, Germany, Kenya, Japan, Mexico, the Netherlands, New Zealand, Pakistan, Singapore, Spain and Sweden, discussed the document and endorsed it as an important contribution to the adoption of a global strategy.

Paragraph 4

2.6 What is Colombia doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

As part of its democratic security policy, developed to preserve democratic order and the rule of law, ensure public safety and freedom, and protect human rights, and, in particular, as part of its strategy for combating terrorism, the Government of Colombia has put in place specific measures aimed, inter alia, at preventing human rights violations, protecting vulnerable population groups, addressing and preventing forced displacement, taking comprehensive action against anti-personnel mines and fighting impunity.

In applying these measures, the Government promotes and supports dialogue in various forums with non-governmental human rights organizations. These forums include round tables for follow-up on international cooperation activities and on the recommendations of the United Nations High Commissioner for Human Rights, risk assessment committees of the various protection programmes, commissions on human rights of indigenous peoples and workers, and the process of formulating the National Plan of Action on Human Rights and International Humanitarian Law.

In the area of protection, activities for vulnerable groups have been strengthened, for example:

- Protection programmes for human rights advocates, labour and union leaders, members of opposition political parties, mayors and city council members, and leaders of organizations of displaced persons, through the expansion of coverage, consolidation in regions, training in preventive security and inclusion of new vulnerable populations.

- Plan of action for the protection and promotion of the human rights of workers, agreed to by the Workers' Human Rights Commission, in which connection round tables for dialogue and understanding were held with various stakeholders in the labour sphere in several Colombian cities, led by the Vice-President of the Republic and the Minister of Social Protection.

- The "Assistance and Protection for At-risk Communities" project in targeted municipalities in 11 regions of the country. The project utilizes three strategies: strengthening of the protection capacity of public institutions at the national, regional and local levels; strengthening of at-risk communities through prevention and self-protection mechanisms to prevent human rights violations; and consensus-building between the State and the community. In all respects, the project aims to foster the development of public policies to address the needs of at-risk communities.

- Protection of threatened teachers: 78 territorial committees for the protection of threatened teachers have been created and put into operation, under the

coordination of the Ministry of Education. In addition, 1,500 threatened teachers have been relocated to other municipalities or departments, in coordination with departmental education secretariats.

- Protection of medical mission personnel: nine departmental medical mission protection plans have been formulated. The Ministry of Social Protection is overseeing their implementation.

Government efforts to strengthen preventive measures include such activities as:

- Creation and implementation of the Inter-Institutional Early Warning Committee (CIAT) for the examination of risk reports prepared by the Office of the Ombudsman concerning threats of large-scale violations of human rights and international humanitarian law and coordination of the response to those threats. From its creation in November 2002 to 13 June 2006, CIAT has reviewed 278 risk reports, 7 of which have concerned imminent threats and 154 have been follow-up notes from the Ombudsman's Office. In response to these reports, the Committee has submitted recommendations to the competent authorities and has issued 112 early warnings;

- A process of decentralizing human rights and international humanitarian law policy through the incorporation of the issue into the development plans of all departments of the country and through the development and implementation of departmental and municipal plans of action on human rights and humanitarian law;

- Formulation of the National Plan for Human Rights Education, under the coordination of the Office of the Ombudsman and the Ministry of Education. This plan is currently in the process of being accredited, to which end a pilot project on the exercise of human rights has been designed with teacher-training schools in five departments of the country;

- Development of a plan for the incorporation of international humanitarian law into the current manuals and doctrine of the armed forces.

Recognizing the problem posed by forced displacement as a result of violence in Colombia, the following comprehensive assistance actions have been taken with a view to preventing further forced displacement and aiding, protecting and ensuring the reintegration and socio-economic stability of displaced persons:

- Adoption of the National Plan for Comprehensive Assistance to Displaced Populations (Decree No. 250 of 2005) and its implementation by national and departmental authorities;

- Release of National Council on Economic and Social Policy (CONPES) document No. 3400 (2005), entitled "Goals and Prioritization of Resources to Assist the Population Displaced by Violence";

- Strengthening and promotion of the participation of the displaced population;

- Formulation of the Operational Plan for the Prevention of Displacement;

- Strengthening of the National System of Assistance to Displaced Populations;

- Formation and commencement of the work of the Regulatory and Risk Assessment Committee to protect leaders of displaced persons in the

framework of the protection programmes overseen by the Ministry of the Interior;

- Promotion and dissemination of information on the rights of displaced persons and related action programmes;
- Coordination of international cooperation;
- Issuance of guidelines for assisting displaced indigenous populations.

Steps are being taken to reduce and prevent impunity in cases of human rights violations and infringement of international humanitarian law, including the formulation of a policy to put a stop to impunity in such cases by strengthening the capacity of the Colombian Government to investigate, prosecute and punish offenders. This policy was approved by the National Council on Economic and Social Policy by means of CONPES document No. 3411 (6 March 2006).

As a result of a project to fight impunity currently under way, 159 cases of serious violations of human rights and international humanitarian law have been filed, in connection with which 302 persons have been captured and 116 have been convicted. The Commission for the Location of Missing Persons has been given renewed impetus as a result of the following: allocation of budget funds to the National Forensic Medicine Institute for the implementation of the National Registry of Missing Persons and the issuance of a statutory law regulating the Emergency Search Mechanism; support for the dissemination of information on the legal mechanisms and policies for addressing the crime of forced disappearance (Act No. 589 of 2000); development of a proposal for a public policy to combat this phenomenon; support for regional visits by the Commission for the Location of Missing Persons; support for the consolidation of information on missing persons; and, finally, adoption of Act No. 986 (2005), which establishes measures for the protection of kidnapping victims and their families.

Additionally, Colombia has ratified the following conventions in recent years:

- The Inter-American Convention on Forced Disappearance of Persons, on 8 November 2005 (Act No. 707 of 2001).
- The Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts, on 8 November 2005 (Act No. 833 of 2003).
- The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (International Labour Organization Convention No. 182), on 28 January 2005.
- The International Convention against the Taking of Hostages, on 8 November 2005 (Act No. 837 of 2003).

3. Assistance and guidance

3.3 The analysis identified the following potential areas of assistance needs, with the understanding that further assessments may be necessary. The points below represent selected areas, referred to in resolution 1373 (2001), where assistance might be particularly useful:

In addition to the Committee's designation of areas in which Colombia might benefit from international cooperation, with which Colombia is in full agreement, the Colombian authorities have identified the following needs:

- **Legislative/regulatory**

  - Development and application of regulations and measures aimed at detecting and preventing money-laundering in the legal and accounting sectors;
  - Development and application of control measures for non-profit organizations;
  - Technical assistance in revising the definition of the crime of money-laundering;
  - Updating of tax, exchange and general regulations governing securities market operations.

- **Practical/operational**

  - Information, assistance and training in regard to successful mechanisms for monitoring funds received by non-profit organizations and preventing their diversion for terrorist purposes;
  - Continuous updating on typologies of money-laundering and financing of terrorism;
  - Development and updating of knowledge in the sectors subject to the reporting requirement,[17] in particular, new sectors on which that requirement has recently been imposed, such as attorneys and accountants;
  - Assistance and training in forensic accounting;
  - Assistance in developing and adopting a risk analysis and screening system that will enable dynamic and efficient management of risks in foreign trade operations;
  - Training in the gathering of evidence and its use in criminal proceedings relating to the financing of terrorism and money-laundering;
  - Technical and financial assistance for the development of an information system in which the documentation and criminal records databases maintained by the various authorities[18] can be unified;
  - Technical and financial assistance for the development of an instruction programme for the personnel staffing machine-readable travel documents (MRTD) checkpoints in order to ensure compliance with the International Civil Aviation Organization (ICAO) standards contained in annex 9 (Facilitation) and document 9303, which defines machine-readable travel documents as documents issued by a State or organization which are used by the holder for international travel and which contain mandatory visual

[17] Finance, securities, stock exchange, gambling and other sectors.

[18] Ministry of Foreign Affairs, Administrative Department of Security (DAS), Office of the Attorney-General, National Office of Public Records.

data in a format which is capable of being read by machine. The 189 contracting States of ICAO have agreed to begin issuing machine-readable passports no later than 1 April 2010;

– Technical and financial assistance for implementing the plan of action formulated in response to the opinions contained in the final audit report of the Universal Security Audit Programme (USAP), in particular with regard to updating the National Civil Aviation Security Programme (PNSAAC), the National Instruction Programme (PNISA) and the National Quality Control Programme, through the application of a technical assistance programme for the adaptation of standards, reinforced by an ongoing formal instruction programme using recognized teaching principles in order to ensure that the target population is kept up to date with regard to the standards, expertise and attitudes needed to carry out the procedures outlined in the plan of instruction. Assistance is also needed to produce the necessary support materials for the instruction and training process;

– Training in the area of documentology for immigration control officials in the country.